Downloaded from Blogs on 08.11.2026 07:17

By PwC Deutschland | 07 November 2025

Losses incurred prior to harmful acquisition may be carried back

The Supreme Tax Court decided that negative income from the financial year in which a harmful acquisition of shares within the meaning of Section 8c Corporation Tax Act takes place is not completely barred as it still can be offset (carried back) against income from the previous year to the extent the losses were incurred prior to the harmful share transfer.

Downloaded from Blogs on 08.11.2026 07:17

Background

Section 8c (1) sentence 1 Corporation Tax Act

Where over the course of five years more than 50 per cent of the issued capital, membership rights, participation rights or voting rights in a corporation are directly or indirectly transferred to a single acquirer or his related party, or where there is a similar occurrence (harmful acquisition), the negative income not recovered or deducted before the harmful acquisition (unutilized losses) ceases to be fully deductible to the extent of the acquisition.

Case in dispute

E-GmbH generated a profit of approximately €1.7 million in 2017. In the 2018 financial year (running from 1 January 2018 to 30 September 2018) it incurred a loss of some €14,000 and applied for an amendment of the 2017 corporate income tax assessment claiming a loss carryback of €14,000. The tax office referred to paragraph 31 of the circular of the Federal Ministry of Finance (MoF) on Section 8c Corporation Tax Act (CTA)from 28 November 2017 and refused the loss carryback.

In the opinion of the MoF, which the tax office has followed in the case of dispute, the curtailment of loss relief pursuant to Section 8c CTA is applicable to all unused losses incurred in a business year and irrespective at what point in time during the business year the harmful acquisition occurs.

The Cologne Tax Court granted the plaintiff's appeal and decided that a loss carryback was possible under the current rules for curtailment of loss relief in Section 8c CTA.

Decision

The Supreme Tax Court agreed with the conclusion of the former tax court and rejected the appeal brought by the tax office. As the tax court of first instance correctly pointed out, the case of dispute does not involve the utilization of losses incurred by the transferring GmbH after the tax transfer date at the level of the acquiring plaintiff but rather concerns the deduction of the loss incurred up to the transfer date from its (“own”) total income of the previous year.

Negative income incurred in the fiscal year of the harmful acquisition of shares prior to that date is subject to the restrictions under Section 8c CTA insofar as it, e. g., cannot be carried forward to subsequent fiscal years. However, Section 8c CTA does not prevent such losses from being offset against positive taxable income from the previous year.

The wording of Section 8c (1) sentence 1 CTA which states that, in the event of a harmful acquisition of shares, losses not utilized prior to this acquisition are “no longer deductible in full” does not clearly indicate an exclusion of loss carrybacks. The Supreme Tax Court

Downloaded from Blogs on 08.11.2026 07:17

has no doubt that a loss carryback (loss incurred in the financial year up to the date of the harmful acquisition of shares) is not affected by the restriction because the loss carryback only allows those shareholders to use the loss who actually incurred it during their own economic involvement.

Source:

Supreme Tax Court judgment I R 1/23 of 16 July 2025 published on 6 November 2025.

Keywords

harmful share acquisition, loss carry-back